

KENTUCKY PUBLIC SERVICE COMMISSION

In the Matter of:)
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)
ELECTRONIC INVESTIGATION OF THE) CASE NO. 2022-00105
PROPOSED POLE ATTACHMENT)
TARIFFS OF INVESTOR-OWNED) **OPPOSITION TO MOTION TO**
ELECTRIC UTILITIES) **STRIKE TESTIMONY OF PATRICIA**
) **D. KRAVTIN**
)

The Kentucky Broadband and Cable Association (“KBCA”)¹ opposes Kentucky Power Company’s (“KPC’s”) motion to strike the testimony of Patricia D. Kravtin. KPC is incorrect that Kravtin’s testimony “re-litigates” an issue the Commission already resolved in its prior pole attachment rulemaking. Rather, her testimony addresses a fact-specific issue the Commission expressly deferred to this tariff proceeding (post-rulemaking). In doing so, Kravtin presents the very kind of “nuanced” and case specific evidence the Commission solicited to evaluate objections to the utilities’ newly-minted pole attachment tariffs.² As such, her testimony is highly relevant – not redundant – and its exclusion would prejudice KBCA’s members and undermine the very purpose of this proceeding— to develop a robust evidentiary record to evaluate the reasonableness of the utilities’ tariffs. Therefore, KBCA respectfully requests that the Commission deny KPC’s motion.

1. KPC’s motion is based on a fundamentally mistaken premise: that the Commission already addressed – in “concept” – the just and reasonable cost allocation method

¹ The KBCA’s members are Access Cable, Armstrong, C&W Cable, Charter Communications, Comcast, Inter Mountain Cable, Lycom Communications, Mediacom, Suddenlink, and TVS Cable. Kentucky Broadband & Cable Association, Our Members, *available at* <https://www.kybroadband.org/members>.

² Kravtin submitted testimony on behalf of the KBCA in the three other cases addressing utility pole attachment tariffs. No other entity in the other dockets objected to her testimony.

for prematurely replaced *non*-red-tagged poles. *See* KPC’s Motion to Strike, (“Mot.”) at 2. However, the Commission did not address this matter. While the Commission adopted a regulation addressing cost recovery for *red-tagged* poles, it expressly declined to adopt a regulation addressing cost recovery of prematurely replaced *non*-red-tagged poles. *See* 807 KAR 5:015 § 4(6)(b)(4).

Instead, the Commission deferred action on that question, explaining that such costs were more appropriately evaluated in adjudications of specific tariff terms. That approach, the Commission explained, would allow it to “address the issue in a more nuanced manner based on evidence regarding specific utilities, including information regarding the age of each utility’s poles and the level of specificity with which they track depreciation expense for utility poles.”³ As the Commission further noted, a more nuanced, case-specific, and traditional approach would ensure that it could evaluate targeted “evidence and explanations” to determine whether utility pole replacement costs are “fair, just and reasonable” – or a “windfall.”⁴

KPC is therefore incorrect that, by promulgating a regulation addressing cost recovery for red-tagged poles, the Commission already rejected any “conceptual” objection to utility tariff terms on cost recovery for non-red-tagged poles. Mot. 4. The Commission expressly reserved that very issue for consideration based on the “evidence and explanations” presented in the context of objections to specific tariff provisions. Consequently, the Commission could not have rejected a “conceptual” objection to a specific tariff provision that had yet to be proposed –

³ Kentucky Public Service Commission, Statement of Consideration Relating to 807 KAR 5:015, at 47, *available at* <https://psc.ky.gov/agencies/psc/Proposed%20Amendments/092021/807%20KAR%205015%20amended%20after%20comment.pdf>.

⁴ *Id.*

especially where the Commission expressly stated it would evaluate such objections based on facts and evidence developed in tariff-specific adjudications.

2. Given that the Commission did not prejudge the “conceptual” reasonableness of any specific tariffs in its prior rulemaking – including a tariff provision setting forth a cost approach for prematurely retired non-red-tagged poles – it could not have (and did not) already “reject” Kravtin’s testimony bearing on KBCA’s objections. Rather than any form of “collateral attack” on the Commission’s regulations, Kravtin’s testimony is the very kind of “nuanced” and case specific evidence the Commission requested in order to evaluate the reasonableness of the costs utilities seek to recover through their new pole attachment tariffs. Mot. 4.

Indeed, Kravtin’s testimony is grounded in evidence developed in *this* tariff proceeding – including utility data and RFI responses – and bears directly on KBCA’s objections to the pole replacement costs the utilities seek to impose on KBCA members. Kravtin Tr. at 10 & 23-40. And, her testimony here demonstrates that the utilities’ tariff provisions seeking certain cost recovery for non-red-tagged poles is unreasonable for multiple reasons:

- The utilities’ data show they are red-tagging a much smaller population of poles than they intend to replace in the normal course of business, improperly shifting the cost of replacing those poles to attaching parties. *Id.* at 29-32.
- The utilities’ data show they are depreciating poles faster than they intend to replace them. As a result, the utilities would recover the full cost of a pole well before it is designated for replacement. *Id.* at 35-37.
- While an attaching party may cause a utility to replace a pole sooner than planned, the utility would eventually need to replace the pole anyway. As a result, attachers

should only be responsible for the costs associated with the early replacement of a pole, which can be readily and transparently calculated. *Id.* at 22-23.

- KPC’s assertion that it does not derive “any benefit” from the early replacement of a pole is unsupported and incorrect.⁵ Utilities derive operational, strategic, and revenue-enhancing benefits, as well as capital savings from early pole replacements. *Id.* at 40.

- Kentuckians will lose roughly \$112 million per year of economic gains if attachers must bear the entire make-ready cost to replace non-red-tagged poles. *Id.* at 11-13.

Kravtin’s testimony thus bears directly on KBCA’s objection to the utilities’ proposed cost allocation for non-red-tagged poles and is the precise evidence the Commission solicited in this proceeding. Kravtin’s testimony is highly relevant and necessary for the Commission to develop a robust record to decide whether utility tariff provisions shifting all costs of replacing non-red-tagged poles to attachers are just and reasonable – or a windfall for the utilities. All Kentuckians will benefit from the timely and cost-efficient deployment of high-speed broadband services if the Commission ensures an equitable, cost-sharing approach to pole replacements, and Kravtin’s testimony is designed to aid the Commission in this determination. On the other hand, KPC has no valid basis for the Commission to disregard Kravtin’s testimony – because there is none – and the Commission should decline to do so.⁶

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For these reasons, KBCA respectfully requests that the Commission deny KPC’s motion.

⁵ KPC Response to KBCA’s Initial Request For Information 1.06; Kravtin Tr. at 39-40.

⁶ Kentucky Public Service Commission, *Order Regarding KBCA Motion for Clarification*, Case No. 2022-00105 (June 3, 2022) (“[T]he procedural schedule contemplated that intervenors would file written, verified witness testimony, if any, to support their objections to the tariffs in this matter.”).

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Respectfully submitted,

/s/  _____

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